

TITLE 83: PUBLIC UTILITIES  
CHAPTER I: ILLINOIS COMMERCE COMMISSION  
SUBCHAPTER b: PROVISIONS APPLICABLE TO  
MORE THAN ONE KIND OF UTILITY

PART 300  
GUIDELINES FOR RIGHT-OF-WAY ACQUISITIONS

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AUTHORITY: Implementing Sections 8-406, 8-503, 8-509, and 15-401 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/8-406, 8-503, 8-509, 15-401, and 10-101].

SOURCE: Adopted at 7 Ill. Reg. 339, effective December 23, 1982; codified at 8 Ill. Reg. 12182; amended at 21 Ill. Reg. 1659, effective February 1, 1997; amended at 34 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 300.30 Negotiation of the Acquisition of a Land Right-of-Way Easement**

This Section shall govern the actions of every person acting in behalf of a public utility when negotiating the acquisition of a land right-of-way easement:

- a) At least 14 days prior to the utility initiating telephone or personal contact with the landowner for the purposes of negotiating the acquisition of a land right-of-way easement, the utility representative shall send to the landowner a letter by certified mail return receipt requested containing the information set forth below together with the "Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Rights-of-Way by Illinois Utilities and Common Carriers by Pipeline" (~~see attached hereto as~~ APPENDIX A).
- b) The utility representative shall keep and maintain a permanent record of letters sent in compliance with this Section.
- c) The letter sent by the utility representative shall be on that representative's

letterhead or on the letterhead of the utility and shall clearly set forth:

- 1) The identity, address and telephone number of the utility representative;
  - 2) The identity of the utility attempting to acquire the land or land rights;
  - 3) The general purpose of the proposed project;
  - 4) The type of facility to be constructed;
  - 5) The general description of the land or land rights the utility seeks to acquire and the type of structures, if any, which the utility seeks to build;
  - 6) A statement that the utility or its representative seeks to negotiate with the landowner to arrive at a fair and reasonable agreement for such land or land rights; and
  - 7) An invitation to the landowner to contact the utility representative to arrange a mutually agreeable time for an appointment to further discuss the matter.
- d) If the landowner does not contact the utility representative within two weeks of the mailing of the original letter, that representative may then contact the landowner to attempt to establish a mutually convenient time and date for a meeting to discuss the matter.
- e) Each utility representative shall carry with him/her and show to every landowner contacted an identification card showing the name and address of the contacting person, his/her employer, and a recent picture of such person. The contacting person shall leave his/her telephone number with the landowner.
- f) Upon the initial personal contact with the landowner, each utility representative shall be prepared to discuss the project for which a land right-of-way is sought in detail, and more specifically inform and advise the landowner in the manner stated, of the following:
- 1) By oral statement concerning the reason for the contact, i.e., general purpose of the proposed project, type of facilities to be constructed.
  - 2) Provide technical information and data surrounding the proposed project. This should include, amongst other things, to the extent

then known to the utility, a written statement outlining briefly the purpose of the project, a small scale map and sketches indicating type(s) of facility, approximate location of facilities, compensation and basis for compensation and, if applicable, type of structures, and amount (length and width) of the land right-of-way deemed necessary. This information shall be left with the landowner for review, along with any agreement or contract proposed by the utility.

(Source: Amended at 34 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 300. APPENDIX A Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Rights-of-Way by Illinois Utilities and Common Carriers by Pipeline**

A representative of a public utility or a common carrier by pipeline ( collectively "company") is contacting you to negotiate the purchase of property or the acquisition of a right-of-way over or through property that you own, or in which you have an interest as an owner. The company proposes to construct, operate and maintain certain facilities on your land, as set forth in the accompanying letter. The company representative contacting you will further explain the proposed project.

The purpose of this Statement is to provide you with general information regarding the regulatory process governing the company's proposed project, including the procedures the company must follow before it can exercise the power of eminent domain to acquire land or land rights. Eminent domain is the power of the State, or those to whom the power is delegated by the State, to take private property for public use upon payment of just compensation as determined by the courts. This Statement covers several questions that landowners commonly ask staff members of the Illinois Commerce Commission ("Commission") about proceedings at the Commission relating to a company's proposed project that would place facilities on or near their property. This Statement, however, is not a legal opinion concerning your rights under the law or the rules of the Commission, nor is it a detailed analysis of the procedures involved. If you have any questions concerning your legal rights, you may wish to consult an attorney.

Requests for a Commission Certificate under Section 8-406 or 15-401 of the Public Utilities Act

Ordinarily, a public utility must obtain a certificate of public convenience and necessity from the Commission under Section 8-406 of the Public Utilities Act [220 ILCS 5/8-406] before constructing major new facilities. Likewise, a common carrier by pipeline ordinarily must obtain a certificate in good standing from the Commission under Section 15-401 of the Public Utilities Act [220 ILCS 5/15-401] before constructing a pipeline or other facility. In either case, to obtain a certificate the company files an application with the Commission describing the proposed project. The Commission then initiates a proceeding to consider the company's application and notifies affected landowners of the date, time, and place of the initial hearing. If you have concerns about the company's proposal, the Commission encourages you to participate in the

Commission's certificate proceeding. Changes to the company's proposal are much less likely after the Commission has approved the proposal and issued the company a certificate. Landowners may participate in the proceeding, either through oral or written statements or by formal intervention as provided in the Commission's Rules of Practice [83 Ill. Adm. Code 200]. In the proceeding, the Commission considers such factors as the public need for the proposed project, the type of facilities to be constructed, and the feasibility of the proposed location of the facilities. If the Commission determines that the company has met the requirements for obtaining a certificate and approves the facility's design and location, the Commission will grant a certificate to the company authorizing construction of the facility and the route the facility will take across or through property not owned or controlled by the company.

#### Requests for a Commission Order under Section 8-503 of the Public Utilities Act

A company may also seek a Commission order under Section 8-503 [220 ILCS 5/8-503] authorizing or directing the company to construct the project, either in conjunction with its request to obtain a certificate under Section 8-406 or Section 15-401, or separately. If a company seeks an order pursuant to Section 8-503 in a separate proceeding, the Commission will notify affected landowners of the Section 8-503 proceeding, and affected landowners may participate in the same manner as described above for applications for certificates under Section 8-406 or Section 15-401. If, at the conclusion of the proceeding, the Commission grants the company's request for an order under Section 8-503, the Commission will issue an order authorizing or directing the company to construct the proposed project, including the specific route of the facility.

#### Requests for eminent domain authority pursuant to Section 8-509 of the Public Utilities Act

A company seeking a Commission order under Section 8-503 may also apply to the Commission for authorization under Section 8-509 [220 ILCS 8-509] to use the power of eminent domain through the courts pursuant to the Eminent Domain Act [735 ILCS 30/1-1-1] to acquire the land or land rights necessary for the project. The company may elect to seek Commission authorization pursuant to Section 8-509, either in conjunction with its request for a Commission order under Section 8-503, or separately. If the Commission authorizes the use of eminent domain under Section 8-509, and if the company is unable to reach agreement with the landowners to acquire the property interests necessary to complete the proposed project, then the company will file a condemnation lawsuit in the circuit court where the property is located in order to obtain the property interests that the project requires. The courts, not the Commission, make the final decision as to whether the company can acquire land or land rights by eminent domain, and if so, the compensation the company will pay to the landowner.

#### Attempts by companies to acquire property rights

Prior to seeking a certificate or Commission order authorizing or directing the company to construct the project, a company may choose to acquire land or land rights from landowners. The company may seek to purchase land or acquire a right for use of the land. Alternatively, the company may seek to obtain an option to purchase land or land rights at a future date. A company representative will provide affected landowners with information regarding the price and other terms the company will offer for the land

or land rights. The company uses its own forms for the transaction. The Commission does not require the company to use any particular form.

The price and other terms for the land or land rights is a matter of negotiation between each landowner and the company. The Commission does not participate in the negotiations and does not establish or approve the negotiated price and other terms for land or land rights. Negotiation involves discussion and bargaining in an effort to reach a mutual agreement. During the negotiations, and at any time, you may be represented by an attorney. However, you are under no obligation to retain anyone to provide legal counsel or otherwise negotiate on your behalf. Further, you are under no obligation to negotiate or reach an agreement with the company. The Commission does not require the company to obtain by negotiation a fixed amount or percentage of land or land rights necessary for the project before the company seeks a certificate or Section 8-503 order.

The Commission typically makes its final decision regarding a project's route in certificate proceedings. Once the company obtains a certificate, issues such as the specific route of the project are not typically reconsidered in subsequent Section 8-503 proceedings before the Commission. Once the company obtains a Commission order pursuant to Section 8-503 for the project, issues such as the specific route of the project will not be reconsidered in subsequent Section 8-509 proceedings before the Commission and in condemnation proceedings before the courts. You should not delay in taking whatever action you believe necessary to protect your property interests. If you elect to negotiate with the company, the Commission encourages you or your representative to negotiate vigorously.

If you have any questions about this Statement or the rules and procedures of the Commission, please contact:

Director, Energy Division  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62701

Please address specific questions concerning your individual property to the company representative.

~~———— A representative of a public utility is contacting you for the purpose of negotiating with you concerning the acquisition of a land right-of-way for utility purposes over property which you own or in which you have an interest as an owner. This right-of-way is proposed to be used for the purpose of constructing, operating and maintaining certain facilities of the utility on your land, as set forth in the accompanying letter. This project will be further explained in detail to you by the utility representative who meets with you concerning this proposal.~~

~~———— The purpose of this Statement is to provide you with general information concerning the initial procedures involved. This Statement covers several questions commonly asked of the Illinois Commerce Commission staff by landowners.~~

~~———— This Statement is not a legal opinion concerning your rights under the law or the~~

~~rules and regulations of the Commission nor is it a detailed analysis of the procedures involved. If you have any questions concerning your legal rights, you may wish to consult an attorney.~~

~~Ordinarily, a public utility must obtain a Certificate of Public Convenience and Necessity from the Illinois Commerce Commission under Section 8-406 of the Public Utilities Act [220 ILCS 5/8-406] before constructing major new facilities. An order pursuant to Section 8-406 allows a utility to begin construction on land which it owns or on which it has acquired an easement. The utility files its application with this Commission for the Certificate, and the Commission then notifies the property owners involved of the date, time and place of the public hearing to be held by the Commission on the utility's application. Landowners may participate in the hearing(s), either through oral or written statements, or formal intervention as provided in the Commission's Rules of Practice (83 Ill. Adm. Code 200). During such hearing(s), the Commission considers the public need for the proposed project, the type of facilities to be constructed and the feasibility of the proposed location of the facilities. If the Commission finds that the proposed facility is reasonably needed to provide utility service to the public and approves of its design and location, the Commission will grant a Certificate of Public Convenience and Necessity to the utility for the construction of the facilities.~~

~~A utility may choose to seek to acquire land or land rights from landowners prior to seeking a Certificate from the Commission. The utility may also seek to obtain an option to purchase a right-of-way from a landowner. The securing of an option does not oblige the utility to purchase the right-of-way. During the negotiations, you may be represented by an attorney. However, you are under no obligation to retain anyone to negotiate on your behalf.~~

~~Negotiation means discussion and bargaining between the landowner and the utility in an effort to arrive at an equitable agreement concerning the land or land rights and the price to be paid for such land or land rights. It does not mean that an agreement must be reached or that either the landowner or the utility must agree with the other. The Commission does not require the utility to obtain by negotiation any fixed amount or percentage of the right-of-way required for the project prior to its applying for a Certificate.~~

~~The price to be paid to the landowner by the utility for the land or land rights is a matter of negotiation between the landowner and the utility. The Commission does not participate in the negotiations nor does it establish or approve the price. Specific information on the price to be offered for the land or land rights will be provided by the utility representative. The utility representative may be negotiating with you for the acquisition of an easement for the use of the land or for the purchase of the land. In either case, the utility will have its own form of easement or deed, as the Commission has no standard forms which the utility is required to use.~~

~~If the utility is able to obtain a Certificate of Public Convenience and Necessity for the project and has been unable to acquire the necessary land or land rights from all~~

~~landowners through negotiation, it may apply to the Commission for an order under Section 8-503 of the Public Utilities Act [220 ILCS 5/8-503]. An order pursuant to Section 8-503 finds that the project is in the public interest and authorizes and directs the project to be built. The Commission will notify the interested landowners from whom the utility has not been able to acquire the necessary land or land rights through negotiation, of the date, time and place of the public hearings to be held by the Commission on the utility's application. Such landowners may participate in the hearing(s), either through oral or written statements, or formal intervention as provided in the Commission's Rules of Practice. During such hearing(s), the Commission determines, among other things, whether the utility had made a reasonable attempt to acquire the necessary land or land rights through negotiation with the landowner.~~

~~——— If the Commission grants the utility an order under Section 8-503 of the Public Utilities Act and the utility still has not been able to acquire the necessary land or land rights through negotiation, the utility may then apply to the courts to exercise the right of eminent domain or condemnation under Article VII, "Eminent Domain," of the Code of Civil Procedure [735 ILCS 5/Art. VII] to acquire the right-of-way. Eminent domain is simply the power of the State, or those delegated by the State, to take private property for public use upon payment of just compensation as determined by the courts.~~

~~——— There is no certainty that the utility will be allowed to acquire land or land rights through the use of eminent domain. However, you should not delay in contacting the utility's representative to attempt to negotiate fair compensation for the land or land rights which the utility seeks. The Commission encourages you to negotiate vigorously on your own behalf or to have an attorney do so for you. If you have any questions about this Statement or the rules and procedures of the Illinois Commerce Commission, please contact the Chief Engineer, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62706. Any specific questions concerning your individual property should be addressed to the utility representative.~~

(Source: Amended at 34 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)